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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,471	10/11/2001	James L. Jason JR.	10559-504001 / P11796	9923
7590 01/10/2005			EXAMINER	
FISH & RICHARDSON PC 4350 LA JOLLA VILLAGE DRIVE SUITE 500 SAN DIEGO, CA 92122			TIV, BACKHEAN	
			ART UNIT	PAPER NUMBER
			2151	

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/976,471	Applicant(s) JASON ET AL.	
	Examiner Backhean Tiv	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Detailed Action

Claims 1-34 are pending in this application.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19,24-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "substantially" in claims 1-19,24-34 is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-34 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,662,230 issued to Eichstaedt et al.(Eichstaedt):

As per claim 1,12,20,24,26,31,33 Eichstaedt teaches a method comprising:

generating information, at first and second points of a network, about unwanted communications that are adapted to substantially reduce the ability of a target device to respond to other communications(Abstract); and analyzing the information generated at the first and second points to identify which of the points first carried the unwanted communications(Abstract, Fig.1-2,col.3, line 41-col.4, line 38; the timestamp keeps track of when the request is sent); blocking communications passing through the first network to the second network(Abstract, Fig.3).

As per claim 2, the method of claim 1, also including detecting the direction of the unwanted communications(col.3, line 41-59)

As per claim 3, the method of claim 1, also including identifying the target device(col.3, line 41-59).

As per claim 4, 15-18,27 also including statistically analyzing the communications to determine if an uncharacteristically large number of communications have passed through at least one of the network points(col.3, line 60-col.4, line 18).

As per claim 5,22,30 the method of claim 1, also including statistically analyzing the communications to determine when an uncharacteristically large number of communications have been targeted toward the target device(col.3, line 60-col.4, line 18).

As per claim 6, 19 also including correlating communications request messages with acknowledgement messages(col.11, lines 10-13).

As per claim 7, the method of claim 1, also including communicating information about the unwanted communications to brokers(Abstract).

As per claim 8, the method of claim 7, also including communicating information about the unwanted communications among brokers(Abstract).

As per claim 9,13,23,28,29 also including blocking a portion of communications passing through the point through which the unwanted communications originated(col.3, line 41-col.4, line 67).

As per claim 10, 14 also including blocking a portion of communication request messages passing through the point through which the unwanted communications originated(col.3, line 41-col.4, line 67).

As per claim 11, the method of claim 1, in which the target device comprises a web server(col.3, line 41-col.4, line 67).

As per claim 21, in which the communications analyzer also includes:
an interface monitor corresponding to each interface device; and
a communications link between the interface monitors(col.3, line 39-col.4, line 67).

As per claim 25, in which the communications monitor includes a plurality of interface monitors for monitoring the passage of messages through a plurality of network points(col.1, line 49-col.3, line 19).

As per claim 32, 34 also capable of configuring a computer to block a portion of the communications passing through the point that first carried the unwanted communications(col.3, line 41-col.4, line 18).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Backhean Tiv whose telephone number is (571)272-3941. The examiner can normally be reached on 9 A.M.-12 P.M. and 1 -6 P.M. Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on (571) 272-3939. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Backhean Tiv
2151
1/4/05


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER